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IN THE

Supreme Court of the United States

October Term, 1964

No. 893

ARTHUR HOFFMAN,
Petitioner,

against

CHRYSLER CORPORATION, *et al.*, and
PAUL C. ACKERMAN, *et al.*,
Respondents, Defendants below,

and

SOL A. DANN, *et al.*, and MARY L. GALLO, *et al.*,
Respondents, Plaintiffs below,

and

HERMAN KOENIGSBERG and VIRGINIA S. JUDSON, *et al.*,
Respondents, Objectors below,

and

ERWIN H. EZZES,
Petitioner (No. 954, Oct. Term 1964),
Objector below.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF DELAWARE

BRIEF OF RESPONDENTS, MARY L. GALLO AND A. JAMES GALLO, IN RESPONSE AND OBJECTION TO THE BRIEF OF SOL A. DANN

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Introductory Statement of Objection

A. The Dann Brief Should Be Stricken By The Court.

In knowledgeable disregard of the Court Rules, Sol A. Dann filed a brief with this Court on April 12, 1965, more than four months after the Supreme Court of Delaware

had denied his petition for reargument, on December 7, 1964 (S. Ct. Dkt. #23).* He did not make application to this Court for an extension of time to file. His filing is untimely on all counts.

The Hoffman petition (No. 893) was filed on February 9, 1965, so that all respondents' briefs thereto were required to be filed, under Rule 24(1), no later than March 11, 1965. The Ezzes petition (No. 954) was filed on March 4, 1965,** so that the last day to file a respondent's brief thereto was April 3, 1965.

Dann chose purposefully to await the filing of all other petitions and briefs before filing anything himself. He concedes this (Dann Brief, pp. 2-5).

Dann unsuccessfully attempted to use the same tactic before the Supreme Court of Delaware, flouting normal procedures and the established rules of that court. After waiting until the normal period for brief filing was about to expire, Dann *in pro per* requested the Supreme Court of Delaware, by letter dated August 21, 1964, to grant an extension of time to him to file a brief until September 30, 1964. Appellees' briefs were due to be filed on August 28, 1964. His asserted third and fourth reasons for the requested extension were that he wished to await the filing of all briefs by appellant objectors and appellee plaintiffs so that, as stated by him, he would know whether they would file briefs as he had requested, "consistent with and not contrary to those allegations" set forth in Dann's filed Appendix. The Gallo plaintiffs then vigorously opposed the extension sought by Dann. Their counsel, William

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* Reference will be made herein to the Appendix to Dann's brief as Dann A ; and to the Hoffman petition as Hof. A . All other references will be the same as in the Gallo brief previously filed in No. 893.

** The Ezzes' petition itself was untimely filed. In that respect see respondents' briefs in No. 954 in opposition to Ezzes petition (Gallo brief, pp. 10-11; Defendants' brief, pp. 13-16).

E. Taylor, Jr., Esq., advised the court of their position in terms that are markedly apposite here:

> "Reasons 3 and 4 apparently relate to matters that lie primarily between Mr. Dann and his former attorneys. As I view it, Mr. Dann has no right or privilege under any circumstances to require me to file briefs consistent or even not consistent with any views that he may maintain. I am not counsel to Mr. Dann and never have been.
>
> "I believe that the position Mr. Dann should like to take as reflected in his third and fourth reasons suffers from a certain arrogance, at least insofar as it relates to the Gallo appellees and to me. He has no right or privilege to sit over any brief that I may submit in behalf of my clients or to supplement it in any particular. If Mr. Dann has anything to say, he should say it within the due time that was alloted to him and he should say it directly and at once and not as a delayed barrage coming after the filing of appellees' briefs, or indeed, after all briefs.
>
> "The Gallo appellees were entirely independent of Mr. Dann in the Court below and they remain entirely independent of him on this appeal. They believe that his request for extensions should be denied; and they urge this strongly."

The Supreme Court denied Dann's request for an extension on August 25, 1964.

Dann follows the same approach before this Court. He states in his brief that he requested the objectors to appeal to this Court (Dann Brief, p. 19). He requests this Court to excuse his delay in filing because he "had hoped and relied upon 'objectors' to fully and accurately explain his position before the court" (Dann Brief, p. 2). This is a lame excuse indeed. If Dann were dissatisfied with the Hoffman brief, which was filed on February 9, 1965, why did he wait until April 12, 1965 to make his own filing? The same holds true with respect to the Ezzes' petition, filed on March 4, 1965. It is apparent that Dann is once

again attempting to sit over *all* briefs filed with the court —a combination of arrogance and flaunting disregard of the rules of this Court.

Furthermore, Dann is following the same tactical pattern with respect to the brief itself as he unsuccessfully pursued before the Delaware Supreme Court. Dann did not take an appeal to the Delaware Supreme Court from the judgment of the Chancellor approving the settlement. Nevertheless, he filed a brief on August 28, 1964, *in pro per*, with the Delaware Supreme Court which he entitled, "Brief of Plaintiff Sol A. Dann" (S. Ct. Dkt. #9). In the brief itself, Dann argued in opposition to the judgment below and sought a reversal and vacatur of the judgment and a remand. It was substantively an *appellant's* brief. A motion was made by defendants to strike Dann's brief on the ground that having failed to take an appeal Dann was precluded under Delaware law from asserting error in the rulings of the Chancellor and he could only file a brief as an appellee in support of the lower court's determinations. (S. Ct. Dkt. #13, 18.) In its final decision affirming the judgment of the lower court, the Delaware Supreme Court granted the motion and struck Dann's brief from the record. The court held that Dann had no standing to argue in opposition to the judgment below (Dann A. 75).

In essence, Dann's lack of status before the Delaware Supreme Court is the same lack of status that obtains for him in this Court. He is not a petitioner for a writ of certiorari. On the other hand, Dann does not regard himself as a respondent (Dann Brief, p. 3). He entitles his writing as, "Brief of Sol A. Dann, Plaintiff Below, In Support of Petitions for Certiorari." Moreover, he has assumed the privilege of recasting the case name by surrounding the term "Respondent" with quotation marks as he applies it to himself in this case. Not only has Dann denied his status as a respondent but his brief is not in any sense a respondent's brief. He does not support the

determinations of the courts below. He opposes them, albeit for his own reasons. These are surely not activities of a respondent; and they belie the status of respondent upon which Dann would technically rely for authority to file his brief to this Court. The status is not there for him to rely upon.

Dann seems to make his presentation in his brief as if it were a petition for certiorari, attempting to raise questions that are solely personal to him. Dann is not seeking to support Hoffman and Ezzes. Dann is seeking, by indirect and highly irregular means, to support Dann.

Dann is an attorney. He knows very well the consequences of not appealing or seeking certiorari. Yet he chose not to appeal to the Delaware Supreme Court or to file a petition to this Court. If rules of court are to have meaning and if all other litigants are to comply with the rules and are to be restricted thereby, there is no reason why Dann ought to have special status and be privileged, chameleon-like, to flip, as he may choose and enjoy, from respondent when that pleases him to appellant when that pleases him.

The Gallo respondents respectfully object to the Dann brief and submit that it should be stricken by the Court.

B. Dann Opposes the Decisions of the Delaware Courts for Personally Motivated Reasons.

Certain basic facts relating to Dann's posture in this litigation are significant. Dann's predominant concern is the matter of his own public image. He concedes this (A. 431-432). The thrust of Dann's entire post-decisional position was plainly stated by him during his oral presentation to the Chancellor when seeking, *inter alia*, a reopening of the record after the decision approving the settlement had been filed (A. 431-432):

> "Mr. Dann: May it please his Honor, the Court, I would like to state my position concerning any of

the proposed orders that have been submitted or may be submitted to you.

"Since the publication of the stockholders' notice, but more especially since this Court's opinion, both I and my family have been terribly hurt at the way these have been interpreted in the press and by the public generally. In fact, your opinion was misinterpreted to mean that there was no basis for bringing this action, when in fact your Honor's opinion did not say so. . . .

"I need this Court's help in order to answer these vicious attacks against me and to make sure that I will have the opportunity to present my position and present to your Honor all of the facts concerning this case before any order is approved."

However, Dann has consistently considered that the objectives of the litigation have been obtained. Dann's law firm is a signatory to the Stipulation of Settlement in behalf of Dann, as plaintiff (A 40). In Dann's affidavit, in support of his firm's fee application, he states:

"65. The Stipulation of Settlement in this case specifically provided, on the top of page 4, the primary consideration for the settlement, namely:

'Plaintiffs having considered, among other things, the significant and steady progress in all phases of Chrysler's operations under new management, believe settlement of the litigation on the terms herein agreed, with the estimated benefits which will flow to Chrysler and its stockholders by reason of the amendment to the Incentive Compensation Plan, can fairly be considered an achievement of the objectives of the litigation and is much to be preferred to a continuation of the litigation, and is in the best interests of Chrysler and its stockholders.'"

Moreover, Dann's own law firm, Dann, Rosenbaum, Bloom & Kaufman, together with his former other coun-

sel, have applied to the Chancery Court for a fee of $5,000,000 (Dann Dkt. #164-169). Dann himself submitted an affidavit in support of that fee application (Dann Dkt. #169). Dann's law partner, Frank Rosenbaum, Esq., submitted an affidavit also. In his brief to this Court, at page 12, under the heading, "Gallos Institute Suit and Intervene. Double Trouble Begins", Dann refers to the $5,000,000 fee application filed by "counsel". The juxtaposition of the reference may prove to be misleading. The Gallo's counsel are *not* involved in the $5,000,000 fee application. The "counsel" involved are Dann's own law firm and his former-other counsel.

No fees have as yet been awarded. The Court of Chancery has deferred any consideration of fees until final approval of the settlement.

In his brief to this Court, at pages 19 and 21, Dann concedes that Chrysler has benefited from the change in the Incentive Compensation Plan, and that his asserted objective of a change of management has also been accomplished.

It is obvious that Dann does not find fault with the ultimate settlement outcome of the litigation or the determinations as such approving the settlement. Dann just does not like the language employed in the decisions of the Delaware courts, or rather, the reportage of the decisions. Consequently, he opposes the determinations and seeks vacatur for his private reasons, personal to him, or as he virtually puts it, his own public image. He is fence-straddling. His position is self-contradictory and self-defeating, and should not be countenanced by this Court.

Moreover, it is unfortunate that Dann has seen fit in his brief to cast aspersions upon the Gallo plaintiffs and their counsel. Such remarks are totally out of order. On this score alone, the Dann brief should be disregarded and

stricken under Rule 40(5). The Gallos are substantial stockholders of Chrysler. They own over 4,800 shares, which represents a current investment of more than $270,000. On the other hand, apparently, Dann's investment in Chrysler stock has been much reduced. The Gallos and their counsel have always acted separately and independently of Dann and his counsel. The Gallo action was instituted, prosecuted and settled in the utmost good faith and in the best interests of Chrysler and its stockholders.

Opinions Below

Dann makes no reference to the principal decisions of the Chancellor approving the settlement and denying applications for reargument, which are reported as *Dann* v. *Chrysler Corporation* in 198 A. 2d 185 (1963) and are reprinted in the Appendix to the Gallo brief in opposition to the Hoffman petition (Gallo A 1-41). He refers only to one of the numerous Memorandum or Letter Opinions rendered by the Chancellor during the course of the Chrysler litigation and the settlement proceedings. He calls it "the (forgotten) 'unrecorded' Opinion".* That Memorandum Opinion (Dann A 48-51) has not been forgotten; but it does not have any particular pertinency here. It relates solely to the defendant Newberg. The Chancellor

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* During the period from December 31, 1963, the date on which the principal opinion approving the settlement was filed, until March 9, 1964, the date of filing the final decree and judgment, the Chancellor rendered five opinions, of which one is reported (namely, the supplemental opinion denying the applications for reargument—198 A. 2d 185). The other four, consisting of two Memorandum Opinions (Gallo Dkt. #95, 104) and two Letter Opinions (Gallo Dkt. #88, 103) are unreported. During the course of the entire Chrysler litigation, the Chancellor rendered thirteen written opinions, of which only four are reported (166 A. 2d 431; 174 A. 2d 696; 198 A. 2d 185). Obviously, as with lower court opinions generally, only those opinions deemed to have more than limited significance are reported.

in accordance with the Stipulation of Settlement declined to dismiss the complaint with prejudice as to Newberg and also signified that the approval of the settlement would not affect the claims involved in the litigation between Chrysler and Newberg.

Jurisdiction

In what context Dann invokes the jurisdiction of this Court is not clear. However, in whatever capacity he may have sought to file his brief, the Gallo respondents submit that this Court does not have jurisdiction to entertain it. The Dann brief is untimely filed, as already shown. 28 U. S. C. § 2101(c); Rule 24(1); *Market Street R. Co.* v. *Railroad Commission*, 324 U. S. 548 (1945).

Furthermore, Dann raised no *constitutional* question before the Court of Chancery. Dann concedes this in his brief (pp. 4-6). Delaware procedure prescribes that no question may be raised on appeal to the Delaware Supreme Court unless it has been fairly presented to the court below for decision. Rule 5(7), Rules of the Supreme Court of Delaware (Vol. 13, Del. Code Ann., Court Rules, 1964 Supp., pp. 5-6). This rule has long been the procedural requirements in Delaware. *Cottrell* v. *Pawcatuck Company*, 36 Del. Ch. 169, 128 A. 2d 225, 233 (S. Ct., Del. 1956), cert. den. 355 U. S. 12 (1957). (See other Delaware cases cited at page 12 of the Gallo brief, in opposition to the Ezzes petition). Having failed to raise a constitutional question before the Chancery Court, and none having been decided by the Delaware Supreme Court, Dann may not raise such question here. *John* v. *Paullin*, 231 U. S. 583, 585 (1913); *Bailey* v. *Anderson*, 326 U. S. 203 (1945).

Nor did Dann properly raise any *federal* question before the Court of Chancery. Dann contends here that the SEC proxy rules were violated under the Securities Exchange

Act of 1934, in that, as he asserts, the Notice to Stockholders was misleading in stating that there was no evidence to support certain claims alleged in the complaint. Aside from the fact that there is no merit to his contention, Dann did not raise the federal statute or the SEC rules during the course of the settlement proceedings; or prior to the final decision of the Chancellor approving the settlement; or in his application to reopen the record, heard by the Chancellor on February 7, 1964. Nor did he specifically make mention of any such claimed violation in his letters of February 14, 1964 or February 18, 1964 addressed to the Chancellor seeking reconsideration of the denial of his application (Dann A 32-37). Only short references to violation of the SEC rules were made by Dann in one or two letters to his counsel, which formed part of some forty-three papers that Dann mailed to the Chancellor with his accompanying letter of February 14, 1964. Hidden references to a federal statute does not specially set up or create a federal question, particularly when first mentioned in any respect after final decision has been rendered and an application for reargument has been denied. *Culey Stave Co.* v. *Butler County*, 166 U. S. 648, 655 (1897); *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67 (1928).

Moreover, even if Dann had properly raised a federal question before the Court of Chancery, he did not appeal to the Delaware Supreme Court. This Court has firmly established the jurisdictional principle that raising a federal question before the trial court will not be enough, if it is not pursued to the higher state court in accordance with state practice. *John* v. *Paullin*, *supra*.

State practice was applied to Dann. By failing to appeal to the Supreme Court of Delaware, that court determined on motion that he had no standing to argue in opposition to the judgment below and struck his briefs

(Dann A 75). Consequently, Dann had no appellant capacity before the Supreme Court of Delaware to raise any substantive constitutional or federal question in opposition to the judgment below, and he therefore cannot raise such questions here.

> "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise: and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." *John* v. *Paullin*, *supra*, 231 U. S., p. 583.

Dann's petition for reargument to the Delaware Supreme Court was denied (Dann A 76).

Dann did not file a petition for a writ of certiorari to this Court.

Consequently, Dann raised no constitutional or federal question in the Delaware courts within the requirements of this Court. He, therefore, lends no jurisdictional support to the Hoffman or Ezzes petitions on any basis, even if there be any such right of tangential support. Furthermore, it should be noted that Dann's proposed federal question is *not* the same as that which Ezzes seeks to raise for the first time in the Ezzes petition. Ezzes claims that 1963 prospective earnings or opinions as to such should have been included in the proxy material respecting the vote of Chrysler stockholders on the modification of the Incentive Compensation Plan. This is not Dann's contention. As to Hoffman, that petitioner belatedly wants to embark on a discovery of his own, acknowledging that he does not know the facts in the case although as an objector he had every opportunity to become fully informed

prior to and at the settlement hearings but neglected to do so or to participate. Dann has his personal axe to grind. It is certainly not that of Ezzes or Hoffman.

Questions Presented

The Gallo respondents will presently demonstrate:

1. That Dann was afforded every opportunity to present to the court prior to and at the settlement hearings, anything which he may have considered material for the court's determination of the fairness of the proposed settlement.

2. That the Chancellor's determination approving the settlement is amply supported by the extensive record, after hearings on proper notice to all Chrysler stockholders.

Counter-Statement of the Facts

The Court is respectfully referred to pages 4-14 of the Gallo brief filed in opposition to the Hoffman petition (No. 893) for an accurate summary of the proceedings in this litigation. It is also referred to the additional pertinent facts relating to Dann which are discussed in the Introductory Statement of Objection in this brief.

ARGUMENT

I.

The Court of Chancery was fully apprised of the papers in Dann's files.

A. Dann and His Counsel Had Produced On Pre-Trial Discovery All Material Then Considered By Them To Be Relevant to the Issues Involved in the Complaint.

Dann's papers were the subject of pre-trial discovery by the defendants prior to the settlement negotiations phase of the litigation. Under court order, subject to safeguards for privileged documents and the names of alleged informants, Dann produced, as he averred, "all material relevant to the issues involved in the complaint, as amended, in this suit, received by him prior to January 1, 1961" (A 330). One of his own attorneys made a special trip to Detroit to inspect the documents in Dann's files for three days and "separated out what I considered partinent to the complaint as then amended" (A 329, 309-10). Those documents were thereafter filed with the Court of Chancery and formed part of the record of the settlement, open to all stockholders of Chrysler for their inspection (A 388; Dann Dkt. #162A).

B. All of Dann's Documents Were Inspected At The Time of the Settlement Hearings, Upon Direction of the Court.

After the Notice of Settlement had been transmitted to the Chrysler stockholders, Dann once again adverted to the information in his files, both in his letter to the Board of Directors of Chrysler (Dann A 29-31)* and in his fee application (Dann Dkt. #167-169).

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* Parenthetically, the letter to the Board of Directors of Chrysler does not make any reference to the SEC proxy rules or to any violation thereof (Dann A. 29-31). His statement at page 14 of his brief that it does is not correct.

A pre-trial hearing was held before the Chancellor on April 11, 1963, at which the matter of the Dann documents were further considered (A 356-374).

The Gallo plaintiffs thereafter took immediate steps to determine whether Dann in fact had any evidence in his files. They believed that the heart of Dann's documents had been produced by him on the pre-trial discovery. Those documents had been considered in connection with the settlement negotiations. The Gallos thereupon moved for the production of all of the documents in Dann's files to which he adverted and they also noticed his deposition (A 377-379).

It is highly significant that Dann interposed objection to any further production and to the taking of his deposition. He directed his Delaware counsel to seek a protective order, and his objections and motion for protective order "were dictated over the phone and directed by Frank Rosenbaum and Sol A. Dann to be filed" (A 381-383). Some of the grounds raised in objection are illuminating:

> "b. There is no good cause shown for the taking of such depositions or for the necessity to produce or examine any additional documents.
>
> * * *
>
> "j. The said moving parties have failed to designate any specific document whatsoever and have failed to indicate the relevance of such documents as are in the possession of defendant Dann.
>
> * * *
>
> "m. That the investigation sought is destructive of the purpose of the settlement to which the relators were a party."

It is apparent that the position taken by Dann in seeking to defeat the motion is antithetical to his instant contentions and manifests their lack of substance.

The Chancellor, however, granted the motion. He directed that Dann produce the documents for inspection and that he appear to testify at the settlement hearing on May 13, 1963 (A 393-396).

All of the Dann documents were produced at the settlement hearing for inspection. At this juncture, it should be recognized that then and there Dann was in a position to select and present to the Chancellor the particular documents, if any, not theretofore produced, which he may have considered were material to the Court's determination of the fairness of the settlement. This, he declined to do (A 403-405). For Dann subsequently to have sought to vacate the Chancellor's determination so that he might have a hearing on his so-called information, and to object to the Court's denial of his application constitutes an affront to the court and a violation of the precepts of orderly judicial procedures. *Braun* v. *Fleming-Hall Tobacco Co.*, 33 Del. Ch. 264, 92 A. 2d 302 (S. Ct., Del., 1952).

Nevertheless, full right and opportunity were afforded to all parties and all objectors and their attorneys to inspect the Dann papers (A 402-408). They were inspected by attorneys for the Gallo plaintiffs through two full day and two night sessions, and on a third day through the late afternoon (A 408). In addition, attorneys for Ezzes, for Chrysler and for certain of the other defendants also inspected the Dann documents during that period (A 453-457).

The attorneys for the Gallos presented an oral report to the Chancellor during the settlement hearings regarding their inspection, concluding that the Dann documents were of the same kind and nature as the material theretofore filed by Dann and did not comprise evidence (A 408-409). Dann did not object to the report or the conclusions reached.

Dann also testified at the settlement hearing. He was in a position to testify in any manner and to refer to any of his documents. He was cross-examined by the attorney for objector Koenigsberg (A 410-421). Dann notes in his

brief at pages 13-14 that he testified with respect to a Dun & Bradstreet report relating to W. Alton Jones. Obviously, a Dun & Bradstreet report has no probative value. Furthermore, the W. Alton Jones transactions were thoroughly explored on depositions and at the settlement hearings. None of the objectors considered that the Jones charges had any merit. Dann testified in support of the proposed settlement and conceded that his documents did not contain admissible evidence (A 410-421).

After testifying at the settlement hearing, Dann asked to be "excused permanently" and for leave to take to Detroit the documents which he had produced. The request was granted by the court (A 421).

Dann, significantly, did not repudiate his testimony at the hearing before the Chancellor on his application to reopen the record after final decision (A 438).

Dann may not for his personal reasons seek to vacate the determination of the Delaware courts. He had every opportunity to urge any contention at the settlement hearings and to introduce any documents that he deemed material. If Dann now feels that he did not take full advantage of that opportunity, that was a matter of his own choice and making and he may not now claim that he was deprived of any constitutional right thereby. *Southern Ry. Co.* v. *Durham*, 266 U. S. 178 (1924).

II.

The determinations of the Delaware Courts approving the settlement are amply supported by the Record after hearings held in accordance with proper judicial procedures.

The Notice of Settlement complied with all the requirements of Delaware law. *Braun* v. *Fleming-Hall Tobacco Co.*, *supra*, 92 A. 2d 302, 309; *Perrine* v. *Pennroad Corp.*, 28 Del. Ch. 342, 43 A. 2d 721, 725 (Ch. Ct. 1945). The

Chancellor found the court-approved notice to be sufficient (A 374).

The notice is elaborately detailed (DX 300). It fully informed the stockholders of the terms of settlement; the attorneys' views of the claims involved; and the right of any stockholder of Chrysler to attend the settlement hearings and present any evidence that may be relevant to the issues to be heard. The stockholders were also advised that all papers and exhibits in the settlement and other documents in the action were on file and available for inspection by the stockholders prior to the settlement hearings. These papers included Dann's documents produced by him on pretrial discovery (Dann Dkt. #162A).

The Chancellor accorded to the objectors a wide latitude of discovery and also appointed an *amicus* to render a report. The hearings on the settlement were extensive (T. Vols. I-III).

All of the foregoing procedures complied with the requirements of due process of law. *Pennoyer* v. *Neff*, 95 U. S. 714, 733 (1877).

The Chancellor found that the evaluations of the claims made by the plaintiffs' attorneys in the Notice were fully supported by the extensive record (Gallo A 13-23); that the settlement was fair and reasonable (Gallo A 33); and that the settlement was entered into in good faith (A 446-447). The court's findings were made under Delaware law and standards. *Krinsky* v. *Helfand*, 156 A. 2d 90, 94 (S. Ct., Del., 1959); *In re Ortiz' Estate*, 26 Del. Ch. 240, 27 A. 2d 368, 374) (Ch. Ct., 1942). These determinations were affirmed by the Delaware Supreme Court applying Delaware law and standards of review. *Rome* v. *Archer*, 197 A. 2d 49 (S. Ct., Del., 1964). The determinations were not made on any federal ground. *Enterprise Irrigation District* v. *Farmers Mutual Canal Company*, 243 U. S. 157 (1917).

Dann's contentions are devoid of merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the brief of Sol A. Dann should be disregarded and stricken, and given no consideration by this Court.

Respectfully submitted,

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